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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Martice Deshawn Wallace,

10 Plaintiff,

11 v.

12 Ryan Thornell,

13 Defendant.
14

No. CV-23-00321-PHX-DJH (JZB)

ORDER

15 This matter is before the Court on the Report and Recommendation (“R&R”) issued
16 by United States Magistrate Judge John Z. Boyle on November 4, 2024 (Doc. 42). The
17 R&R recommends the following rulings:

- 18 - Plaintiff should be permitted to supplement Counts One and Two of
19 the First Amended Complaint. (*Id.* at 1).
20 - Plaintiff should not be allowed to amend Counts Three, Four, or Five.

21 (*Id.* at 7–8). Judge Boyle advised the parties that they had fourteen days to file objections
22 to the R&R. (*Id.* at 10). Plaintiff Martice Deshawn Wallace (“Plaintiff”) filed his
23 Objection ten days later, on November 14, 2024 (Doc. 44). Defendant Ryan Thornell
24 (“Defendant”) filed a Response to Plaintiff’s Objection. (Doc. 45). Having reviewed the
25 R&R *de novo* in light of Plaintiff’s timely Objection, the Court finds that the R&R should
26 be accepted in all respects and will adopt it as the Order of the Court.

27 **I. Background**

28 The R&R recounted the factual and procedural background regarding Petitioner’s

1 Motion to Amend his Complaint (Doc. 30). (Doc. 42). Neither party objected to this
2 recounting and the Court will accept and adopt it, but will briefly restate the facts pertinent
3 to its review.

4 Plaintiff brought four counts against Defendant: (1) that the Arizona Department of
5 Corrections, Rehabilitation, and Reentry's ("ADC") Department Order 914 ("DO 914")
6 violated his First Amendment right to freedom of expression because the policy was
7 unconstitutionally vague and overbroad, and it was being enforced to censor non-nude or
8 non-sexually-explicit materials; (2) that DO 914 was unconstitutional as applied to
9 Plaintiff, because Defendant censored non-nude and non-sexually explicit materials sent to
10 Plaintiff in violation of the First Amendment; (3) that Defendant's procedures for appealing
11 these determinations are inadequate and ineffective, and violate the Due Process Clause of
12 the Fourteenth Amendment; and (4) that Defendant's Department Order governing
13 grievance procedures was inadequate, ineffective, and also violative of the Fourteenth
14 Amendment's Due Process Clause. (Doc. 7 at 3-8).

15 On June 22, 2023, the Court screened the First Amended Complaint ("FAC").
16 (Doc. 8). It dismissed Counts Three and Four against Defendant, but directed him to
17 answer Counts One and Two. (*Id.* at 12). Defendant then moved to dismiss the FAC,
18 arguing that "the prison mail policy on which the Plaintiff-inmate's injunctive relief claims
19 are based has been replaced by a new policy." (Doc. 16 at 1). The Court denied
20 Defendant's Motion to Dismiss. (Doc. 38).

21 Before the Motion to Dismiss was decided, Plaintiff moved to amend the FAC.
22 (Doc. 30). In Count One of the Second Amended Complaint, Plaintiff has updated his
23 allegations to address the updated DO 914 policy, which Plaintiff contends is still
24 unconstitutionally vague and overbroad. (Doc. 31 at 5). Plaintiff alleges that prison
25 officials continue to subjectively censor constitutionally protected content statewide, and
26 that the provision of the updated policy providing for reconsideration is a "sham" and
27 "subterfuge" because his requests for reconsideration have been ignored. (*Id.* at 7). In
28 Count Two, Plaintiff updated his "as applied" challenge to DO 914 to address the updated

1 version of the policy. (*Id.* at 11).

2 In Count Three, Plaintiff brought a Fourteenth Amendment claim citing the lack of
3 due process in disciplinary proceedings. (*Id.* at 14). Plaintiff alleges that on July 23, 2023,
4 after the Complaint initiating this action was filed, Defendant Santos Salgado initiated the
5 “Incident Command System” due to an alleged physical altercation in the dining area. (*Id.*)
6 Plaintiff alleges that despite passing a “body-knuckle search,” he was implicated in the
7 incident by Defendant Salgado, an account which the Plaintiff claims was knowingly
8 fabricated and belied by video camera footage. (*Id.*) Plaintiff further alleges that
9 Defendant Barragan (first name unknown) “intentionally failed to conduct [a] full, fair,
10 unbiased investigation into the charge” by failing to interview staff and failing to require
11 them to submit reports. (*Id.* at 15). Plaintiff alleges he was denied copies of the available
12 information reports, camera footage, and other evidence before his disciplinary hearing.
13 (*Id.* at 15–16). At his hearing, Plaintiff alleges Defendant O. Martinez (“Martinez”) failed
14 to remedy the procedural defects in the charge and failed to make evidence available to
15 Plaintiff. (*Id.* at 17). Plaintiff states Defendant Barragan admitted to erroneously stating
16 Plaintiff had admitted guilt. (*Id.* at 18). Plaintiff also states that Defendant Julie Bowers
17 failed to remedy these defects on Plaintiff’s first-level appeal, and that Defendant J.
18 Barreras “intercepted and denied” Plaintiff’s second-level appeal, and prevented it from
19 being reviewed by ADC’s Office of General Counsel. (*Id.* at 20).

20 In Count Four, Plaintiff alleges additional Fourteenth Amendment Due Process
21 violations. (Doc. 42 at 4). He alleges Defendant Alexis Reyes filed a meritless disciplinary
22 charge against him for making threatening or intimidating statements on October 23, 2023.
23 (*Id.* at 22). Plaintiff characterizes the report as “retaliatory,” and stated it caused him to be
24 placed in detention. (*Id.* at 23). Plaintiff states Defendant Jiminez (first name unknown),
25 the disciplinary coordinator, participated in these constitutional deprivations by failing to
26 provide the requested number of witness statements and by otherwise failing to thoroughly
27 investigate the matter. (*Id.*) Plaintiff also stated that Defendant Martinez once again
28 conducted the disciplinary hearing, but violated Plaintiff’s constitutional rights by

1 disregarding Plaintiff's request to call witnesses and ignoring Plaintiff's request for access
 2 to evidence. (*Id.* at 26). Plaintiff again alleged Defendant Bowers "rubber-stamped" the
 3 guilty finding. (*Id.*)

4 In Count Five, Plaintiff alleges retaliation in violation of the First Amendment.
 5 (*Id.* at 28). Plaintiff states that the several Defendants identified in Counts Four and Five
 6 violated his right to "voice grievances and to bring lawsuits for wrongs done by prison
 7 officials without being subjected to various forms of retaliation from the named
 8 Defendants[.]" (*Id.* at 28). Plaintiff asserts Defendants Reyes, Jiminez, and Martinez
 9 retaliated against him for expressing grievances with prison administration and for helping
 10 the inmate population understand the legal process. (*Id.* at 29). Plaintiff alleges Defendants
 11 improperly seized and destroyed his legal materials and conducted "botched" disciplinary
 12 proceedings to have him placed in detention and eventually transferred to several prison
 13 complexes around the state. (*Id.*) Plaintiff further alleges that Defendants Mendoza,
 14 Zambrano, and Palmer inspected his legal boxes outside of his presence and seized and
 15 destroyed "voluminous amounts of Plaintiff's legal materials[.]" (*Id.* at 31). Plaintiff states
 16 that Defendant's actions hindered his ability to research, write, and prepare legal
 17 documents. (*Id.* at 32.) He further alleges that in December 2023, a John Doe Defendant
 18 destroyed his legal boxes in retaliation for his litigation activities. (*Id.* at 33).

19 **II. Standard of Review**

20 The district judge "shall make a *de novo* determination of those portions of the report
 21 or specified proposed findings or recommendations to which objection is made." 28 U.S.C.
 22 § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b)(3) ("The district judge must determine *de*
 23 *novo* any part of the magistrate judge's disposition that has been properly objected to.");
 24 *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Objections are to the R&R, and
 25 are not to "be construed as a second opportunity to present the arguments already
 26 considered by the Magistrate Judge." *Betancourt v. Ace Ins. Co. of Puerto Rico*, 313 F.
 27 Supp.2d 32, 34 (D.P.R. 2004). The judge "may accept, reject, or modify, in whole or in
 28 part, the findings or recommendations made by the magistrate judge." 28 U.S.C.

1 § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3).

2 **III. Discussion**

3 Plaintiff argues that Defendant would not suffer undue prejudice by being allowed
4 to add new constitutional claims, but concedes that allowing this amendment would
5 “expand the scope of issues” in this matter. (Doc. 44 at 2). Plaintiff asserts that Defendant
6 has yet to engage in discovery, so any prejudice would be “de minimus” at best, and that
7 allowing amendment would conserve judicial resources. (*Id.*) Defendant argues that
8 Plaintiff’s Objections should be overruled because his arguments are repetitive and he
9 should file a new suit to bring his new claims against new parties.

10 **A. Applicable Law**

11 Under Federal Rule of Civil Procedure 15(a)(1), a party may amend its pleading
12 once as a matter of course no later than:

13 (A) 21 days after serving it, or

14 (B) if the pleading is one to which a responsive pleading is required, 21 days
15 after service of a responsive pleading or 21 days after service of a motion
under Rule 12(b), (e), or (f), whichever is earlier.

16 Fed. R. Civ. P. 15(a)(1). After that, “a party may amend its pleading only with the opposing
17 party’s written consent or the court’s leave. The court should freely give leave when justice
18 so requires.” Fed. R. Civ. P. 15(a)(2). When assessing the propriety of a motion for leave
19 to amend, the Court considers several factors: “bad faith, undue delay, prejudice to the
20 opposing party, futility of amendment, and whether the plaintiff has previously amended
21 the complaint.” *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004).

22 Alternatively, at issue is whether the Court should allow supplementation of the
23 First Amended Complaint. Rule 15(d), Federal Rules of Civil Procedure, pertains to
24 supplemental pleadings:

25 On motion and reasonable notice, the court may, on just terms, permit a party
26 to serve a supplemental pleading setting out any transaction, occurrence, or
27 event that happened after the date of the pleading to be supplemented. The
28 court may permit supplementation even though the original pleading is
defective in stating a claim or defense. The court may order that the opposing
party plead to the supplemental pleading within a specified time.

1 Fed. R. Civ. P. 15(d). “Rule 15(d) is intended to give district courts broad discretion in
 2 allowing supplemental pleadings.” *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988)
 3 (citations omitted). It “provides a mechanism for parties to file additional causes of action
 4 based on facts that didn’t exist when the original complaint was filed.” *Eid v. Alaska*
 5 *Airlines, Inc.*, 621 F.3d 858, 874 (9th Cir. 2010) (citations omitted). Subsequent claims
 6 need not arise out of the same transaction or occurrence as the claims in the original
 7 complaint, but “some relationship must exist between the newly alleged matters and the
 8 subject of the original action[.]” *Keith*, 858 F.2d at 474 (citations omitted).

9 “While leave to permit supplemental pleading is favored, it cannot be used to
 10 introduce a *separate, distinct and new cause of action*[.]” *Planned Parenthood of S.*
 11 *Arizona v. Neely*, 130 F.3d 400, 402 (9th Cir. 1997) (cleaned up) (emphasis added). Like
 12 the standard for amending complaints, “leave to file a supplemental complaint should be
 13 freely granted unless there is undue delay, bad faith or dilatory motive on the part of the
 14 movant, undue prejudice to the opposing party, or the supplement would be futile.”
 15 *Womack v. GEO Grp., Inc.*, No. CV-12-1524-PHX-SRB, 2013 WL 491979, at *5 (D. Ariz.
 16 Feb. 8, 2013) (citations omitted); *Greenwich Inv. Mgmt. Inc. v. Aegis Cap. Corp.*, 2024
 17 WL 1156568, at *7 (D. Ariz. Mar. 18, 2024).

18 **B. Counts Three and Four**

19 On Counts Three and Four, Judge Boyle found that they “allege separate and distinct
 20 causes of action which are insufficiently connected to the claims Plaintiff alleged earlier[.]”
 21 consequently, “Plaintiff should not be permitted to supplement his [FAC] with these causes
 22 of action.” (Doc. 42 at 7 (citing *Neely*, 130 F.3d at 402 (stating the rule “cannot be used to
 23 introduce a separate, distinct and new cause of action[.]”))). The Court agrees.

24 In the FAC, Plaintiff alleged that ADC’s appellate procedures failed to give senders
 25 notice of censored content and that Defendants have a pattern and practice of ignoring
 26 meritorious complaints in violation of the Fourteenth Amendment’s Due Process Clause.
 27 (Doc. 7 at 9–10). Now, in Plaintiff’s proposed SAC, Count Three alleges that, after the
 28 original Complaint was filed, Defendant Salgado wrongfully implicated Plaintiff in a

1 physical altercation. (Doc. 31 at 14). As for Count Four, Plaintiff alleges that Defendant
 2 Reyes filed a meritless disciplinary charge against him for making threatening or
 3 intimidating statements, which also occurred *after* the FAC was filed. (*Id.* at 22).

4 Plaintiff’s proposed Counts Three and Four each allege sufficiently separate and
 5 distinct acts which do not meet Rule 15’s contours. (*Compare* Doc. 7 at 9–10 with Doc.
 6 31 at 14, 22). For example, Plaintiff’s original Count Three alleged that Defendant’s
 7 appellate procedures for appealing censored content are ineffective and inadequate.
 8 (Doc. 7 at 9). However, in his new proposed Count Three, he states that Defendant Salgado
 9 fabricated an incident report in violation of Plaintiff’s procedural due process rights.
 10 (Doc. 31 at 14). Plaintiff seeks to bring a new separate and distinct cause of action through
 11 a Rule 15 amendment—which he cannot do. *Neely*, 130 F.3d at 402 (stating the rule
 12 “cannot be used to introduce a separate, distinct and new cause of action[.]”). So, the Court
 13 will overrule Plaintiff’s Objections to Judge Boyle’s findings that Counts Three and Four
 14 should not be supplemented. *See* 28 U.S.C. § 636(b)(1)(C).

15 **C. Count Five**

16 Plaintiff also objects to the Judge Boyle’s finding on “discovery constraints
 17 remaining in place.” (Doc. 44 at 3). While not clearly stated, the Court construes this
 18 argument as asserting that Judge Boyle erred in finding that the delay this new discovery
 19 would require would unfairly prejudice the existing Defendants. (*See* Doc. 42 at 10).

20 Judge Boyle found that Plaintiff’s Count Five would “significantly expand the
 21 number of parties and the scope of issues a year and eight months into the case and would
 22 necessitate additional discovery.” (Doc. 42 at 10). He also found that Plaintiff “alleges
 23 retaliation not for the specific act of filing this lawsuit alone, but for a history of advocating
 24 for his fellow inmates, filing formal grievances, and filing lawsuits, many of which are
 25 unrelated to the present case.” (*Id.* at 9 (citing *Caruso v. Solorio*, 2019 WL 6009465, at
 26 *3-4 (E.D. Cal. Nov. 14, 2019) (holding that the allegations in the supplemental pleading
 27 “certainly bear some relation to the claim set forth in the original pleading, because the
 28 proposed supplemental pleading alleges retaliation against Plaintiff for litigating this very

1 case[,]” but ultimately denying the motion to supplement due to prejudice to the current
2 defendants))). In sum, the R&R concluded that allowing supplementation of the complaint
3 is unwarranted as to Count Five, and that Plaintiff may bring Counts Three, Four, and Five
4 in a new lawsuit. (*Id.* at 10). The Court agrees.

5 The Court is sympathetic to Plaintiff’s predicament of attempting to litigate his
6 grievances from within the ADC. However, Rule 15(d) only allows for supplementation
7 where “some relationship” exists between the newly alleged matter and the subject of the
8 original action. *Keith*, 858 F.2d at 474. Here, there is no such relationship. In Plaintiff’s
9 newly alleged Count Five, he seeks to bring a new claim against a new Defendant. Thus,
10 Judge Boyle did not err in finding that the Amendment should not be allowed due to it
11 “significantly” expanding “the number of parties and the scope of issues a year and eight
12 months into the case” which would necessitate additional and different discovery (Doc. 42
13 at 10 (citing *Aros v. Ryan*, 2014 WL 2616521, at *3 (D. Ariz. June 12, 2014) (“Granting
14 Plaintiff’s request would essentially start the case over with a new defendant added and
15 discovery would need to start anew as to the new defendant. That kind of delay would
16 unfairly prejudice the existing Defendants.”))).

17 In sum, the Court agrees with Judge Boyle that all three claims which Plaintiff seeks
18 to amend or supplement should be brought in a new lawsuit because they are “separate,
19 distinct and new cause[s] of action[.]” *Neely*, 130 F.3d at 402. Thus, this Court overrules
20 Plaintiff’s objections and Judge Boyle’s R&R is adopted in full. *See* 28 U.S.C.
21 § 636(b)(1)(C).

22 Accordingly,

23 **IT IS ORDERED** that the Magistrate Judge’s R&R (Doc. 42) is **accepted** and
24 **adopted** as the Order of this Court and Plaintiff’s Objections (Doc. 44) are **overruled**.

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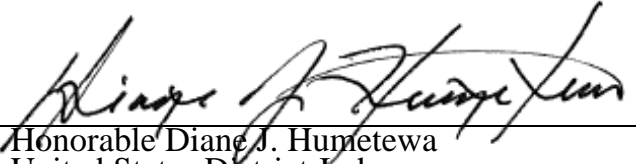
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1 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Amend (Doc. 30) is
2 **granted, in part and denied, in part** as follows:

- 3 • Plaintiff may supplement Counts One and Two of his First Amended
4 Complaint **only** and shall file any Second Amended Complaint incorporating
5 the proposed amendments within ten (10) days of this Order.
- 6 • Plaintiff shall **not** be allowed to amend his First Amended Complaint with
7 Counts Three, Four, or Five, and Counts Three, Four, and Five shall be
8 **dismissed** for the reasons stated herein.
- 9 • Defendants shall answer or otherwise respond to Plaintiff's Second Amended
10 Complaint within fourteen (14) days after his filing.

11 Dated this 31st day of March, 2025.

12 
13 Honorable Diane J. Humetewa
14 United States District Judge

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